

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Katherine Mendola

v.

Civil No. 11-cv-338-PB

Joanne Fortier, Warden,
New Hampshire State Prison
for Women

REPORT AND RECOMMENDATION

On February 2, 2012, the court issued an order (doc. no. 9) finding that Mendola's habeas petition, filed under 28 U.S.C. § 2254, was a "mixed petition," as petitioner had failed to demonstrate exhaustion of all of the claims raised. Because a mixed petition must be dismissed, see Rhines v. Weber, 544 U.S. 269, 273 (2005), the court provided Mendola with the opportunity, within 30 days, to amend her petition (doc. no. 1) to demonstrate that all of the claims therein had been exhausted.

In the February 2 order, the court alerted Mendola to the option of notifying this court unequivocally that she intends to drop any unexhausted claims from the petition, with the understanding that by doing so, she risks losing the opportunity to assert those claims in a future habeas petition. The court further granted Mendola leave to request a stay in this matter

to enable her to return to the state courts to complete exhaustion of any unexhausted claims without jeopardizing the timeliness of her petition.

On March 15, 2012, the court, having received no response to its February 2 order, issued an order (doc. no. 10) granting Mendola an additional fourteen days to comply with the February 2 order. In both orders to amend (doc. nos. 9 and 10), the court warned Mendola that her failure to amend her petition as directed would result in this court recommending that the petition (doc. no. 1) be dismissed for failing to demonstrate exhaustion.

Mendola has not filed an amended petition, a motion to stay, or any other response to the court's February 2 order (doc. no. 9) and March 15, 2012, order (doc. no. 10). The court therefore recommends that the petition (doc. no. 1) be dismissed, without prejudice, for failing to demonstrate exhaustion of each claim raised therein.

Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See United States v. De Jesús-Viera, 655 F.3d 52, 57 (1st Cir. 2011), cert. denied, 132 S. Ct. 1045 (2012); Sch.

Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010) (only issues fairly raised by objections to magistrate judge's report are subject to review by district court; issues not preserved by such objection are precluded on appeal).

A handwritten signature in black ink, appearing to be 'Landya McCafferty', is written over a horizontal line.

Landya McCafferty
United States Magistrate Judge

April 4, 2012

cc: Katherine Mendola, pro se

LBM:jba